In the High Court of Uttaranchal, at Nainital.

Writ Petition No. 292(S/B) of 2003

1- S.K. Sharma S/o late S.R. Sharma
R/o T- 103, Behind C.W.E. Office
Mall Road, Dehradun.

2- N.N. Yadav S/o M.P. Yadav
R/o 5/1/ 4, Mall Road, Dehradun.

3- M.P. Gupta S/o Ghanshyam Das Gupta
R/o G.E.(P), Dehradun.

4- D.N. Sharma, S/o O.P. Sharma
R/o G.E. (I) R & D Dehradun … Petitioners.

Versus

1- Secretary, Ministry of Defence, Army
Headquarters, New Delhi.

2- Engineer-in-Chief, Kashmir House
New Delhi …. Respondents.

Sri Manish Dalakoti, Advocate for the petitioners.
Smt. Anjali Bhargava, learned S.C. for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 18-5-2006

By way of this writ petition the petitioners have sought the following reliefs:-

(A) To issue a writ, order or direction in the nature of mandamus directing the respondents to enhance the pay scale of petitioners from 7500-12000 with effect from 1.1.1996.

(B) To issue a writ, order or direction in the nature of mandamus directing the respondents to pay arrears of service pay scale with effect from 1.1.1996 alongwith interest of 18% per annum.

2- Brief facts of the case, as per the writ petition, are that the petitioner No.1 is a Junior Engineer in M.E.S., Dehradun and is presently drawing the pay scale of Assistant Engineer after serving 15 years on the said post while the petitioner Nos. 2 to 4 are presently serving as Assistant Engineer in M.E.S. Dehradun. It has

been claimed by way of the petition that the pay scale of the Assistant Engineer and Assistant Executive Engineer in accordance with third Pay Commission was Rs. 650-1200 and 700-1300 respectively. Thereafter in fourth Pay Commission it was fixed 2000-3500 and 2200-4000 respectively. The disparity in the pay scale came into existence in adoption of the pay scale pursuant to the framing of fifth Pay Commission as on the basis of the recommendation of fifth Pay Commission the respondents ought to have fixed next pay scale of petitioners in the pay scale of 7500-12000. The respondents inspite of appreciating the fact that there was anomaly in adoption of pay scale of Assistant Engineers pursuant to recommendation of fifth Pay Commissioner, for the reasons best known to them, only made applicable said enhanced scale to 50% senior incumbents who were receiving pay scale of Assistant Engineer. The respondents have therefore acted in arbitrary and illegal manner by canceling the enhanced pay scale of the petitioners pursuant to the recommendation of fifth Pay Commission on account of introduction of Assured Careers Progression Scheme 1999. The petitioners have also claimed that the Assistant Executive Engineers and Assistant Engineers are Sub Divisional Officers holding same duties, responsibilities and power and there could be no reason for not adopting same pay scale of Assistant Executive Engineers and Assistant Engineers. The petitioners pursued their demand by way of representation made before the respondents but the respondent No.2 without application of mind rejected the representation. Hence this writ petition.

4- The counter affidavit has been filed by the respondents stating therein that from perusal of copy of the Government of India MOD Letter No. 85601/16/V CPC/3/CSCC/173/D (Works) dated 19 Jan. 2000, it is quite clear that upgraded pay scale of 50% of the posts was given on the basis of the recommendation of V.C.P.C. contained in para-50.38 and it was not because of any appreciation of the fact that there was anomaly in adopting the pay scale of Assistant Engineers pursuant to the recommendation of fifth Pay Commission. It has also been stated that the Assured Career Progression Scheme provides for two times bound upgradations in

the hierarchy which is based on para 50.38 of the VCPC in order to give benefit of functional promotion, 50% of the posts of Assistant Engineers were placed in higher pay scale of Rs. 7500-12000 and designated as Assistant Engineer Grade-I which becomes promotion post for Assistant Engineer Grade-II. If this post was not cancelled the financial upgradation to the Junior Engineers would have been in the pay scale of Assistant Engineer Grade-II and Assistant Engineer Grade-I and not the scale of Executive Engineer which has been provided in the ACP Scheme order dated 23-1-2002. It has also been pleaded in the counter affidavit that no anomaly has crept-in since the pay scale has being recommended by the expert body fully authorized to do so and the VCPC has taken all aspects in consideration while adopting the pay scale for the Assistant Engineers.

4- The petitioners have filed rejoinder affidavit reiterating the facts mentioned in the writ petition.

5- Heard learned counsel for the parties and perused the record.

6- From the perusal of Annexure- C.A. -1 filed along with the counter affidavit it is quite clear that upgraded pay scale for 50% of the posts was given on the basis of the recommendation of V.C.P.C.

7- Further C.A.-2 annexed with the counter affidavit also reveals that Assured Career Progression Scheme provides for two financial upgradation in the entire Government service career and this scheme is based on para 50.38 of VCPC to give benefit of functional promotion, 50% of the posts of Assistant Engineers were placed in higher pay scale and designated as Assistant Engineer Grade-I which becomes promotional post for Assistant Engineer Grade-II.

8- We have considered the aforesaid material available on record and we do not find any anomaly as the pay scale has been recommended by the expert body duly authorized to do so. It reveals that the V.C.P.C. has taken all aspects into consideration while adopting the pay scale for Assistant Engineers.

9- Accordingly we do not find any ground for issuing a direction in the nature of mandamus directing the respondents to enhance the pay scale of the petitioners.

10- The writ petition lacks merit and is liable to be dismissed.

11- Accordingly the writ petition is dismissed.

(B.C.Kandpal, J.) **(P.C. Verma, J.)**

ISB